

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**

**ELC CASE NO. E012 OF 2023**

**AFRICAN GAS AND OIL LIMITED.....PLAINTIFF**

**- VERSUS -**

**KAHIA TRANSPORTERS LIMITED.....1<sup>ST</sup> DEFENDANT**

**CABINET SECRETARY MINISTRY OF  
ENVIRONMENT AND FORESTRY.....2<sup>ND</sup> DEFENDANT**

**CABINET SECRETARY MINISTRY OF LANDS,  
HOUSING AND URBAN DEVELOPMENT.....3<sup>RD</sup> DEFENDANT**

**KENYA FOREST SERVICE.....4<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, MOMBASA.....5<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....6<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL.....7<sup>TH</sup> DEFENDANT**

**AND**

**COUNTY GOVERNMENT OF MOMBASA...1<sup>ST</sup> INTERESTED PARTY**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup> INTERESTED PARTY**

**MKUPE BEACH MANAGEMENT UNIT [BMU].3<sup>RD</sup> INTERESTED PARTY**

**AND**

**OSMAN AHMED KAHIA .....**

**CONTEMNOR**

**CONSOLIDATED WITH**  
**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**  
**ELC CASE NO. E004 OF 2023**

**MIRITINI FREEPORT LIMITED.....PLAINTIFF**

- VERSUS -

**KAHIA TRANSPORTERS LIMITED.....1<sup>ST</sup> DEFENDANT**  
**CABINET SECRETARY MINISTRY OF**  
**ENVIRONMENT AND FORESTRY.....2<sup>ND</sup> DEFENDANT**  
**CABINET SECRETARY MINISTRY OF LANDS,**  
**HOUSING AND URBAN DEVELOPMENT.....3<sup>RD</sup> DEFENDANT**  
**KENYA FOREST SERVICE.....4<sup>TH</sup> DEFENDANT**  
**DISTRICT LAND REGISTRAR, MOMBASA.....5<sup>TH</sup> DEFENDANT**  
**CHIEF LAND REGISTRAR.....6<sup>TH</sup> DEFENDANT**  
**ATTORNEY GENERAL.....7<sup>TH</sup> DEFENDANT**

**AND**

**COUNTY GOVERNMENT OF MOMBASA...1<sup>ST</sup> INTERESTED PARTY**  
**NATIONAL LAND COMMISSION.....2<sup>ND</sup> INTERESTED PARTY**  
**MKUPE BEACH MANAGEMENT UNIT [BMU].3<sup>RD</sup> INTERESTED PARTY**

**RULING**

1. By the Notice of Motion dated 4<sup>th</sup> October, 2024 Miritini Free Port Limited (the Applicant) prays for orders as follows:

**1) Spent**

**2) That the Honorable Court be pleased to cite the 1<sup>st</sup> Respondent, Kahia Transporters Limited and its directors, particularly Mr. Osman Ahmed Kahia for disobedience of this Court's express order issued on the 6<sup>th</sup> September 2023;**

**3) That the Honorable Court be pleased to cite the Osman Ahmed Kahia for disobedience of this Court's Order issued on the 6<sup>th</sup> September 2023;**

**4) That this Honorable Court be pleased to demand and direct that the 1<sup>st</sup> Respondent's director Osman Ahmed Kahia to personally appear in court to show cause why he should not be committed to civil jail for a period of six (6) months or such other sentence as may be found fair and just in the circumstances for being in flagrant disobedience of Court orders issued on 6<sup>th</sup> September 2023;**

**5) That an order of committal be and is hereby issued against Osman Ahmed Kahia to prison for a period of six (6) months;**

**6) Spent; and**

**7) That the costs of this application be borne by the 1<sup>st</sup> Respondent.**

2. The application which is supported by an Affidavit sworn by the Applicant's Legal Officer John Mwella is premised on the grounds inter alia that:

**i) On 6<sup>th</sup> September 2023, this Court issued temporary orders of injunction restraining the 1<sup>st</sup> Defendant from interfering, blocking, denying, impeding, preventing, obstructing, hampering, fettering or in any other manner whatsoever restraining or limiting the Applicant's access to the parcel of land known as LR. No. 5169/VI/MN**

**(Title No. CR 70862) and from interfering with the Applicant's use and enjoyment of the same;**

- ii) On 7<sup>th</sup> September 2023, the Applicant served the 1<sup>st</sup> Respondent with the said orders;**
- iii) The 1<sup>st</sup> Respondent's Counsel has been in attendance in Court on diverse dates of 8<sup>th</sup> November 2023, 15<sup>th</sup> January 2024, 7<sup>th</sup> March 2024 and 30<sup>th</sup> July 2024 whereby the interim orders were extended by the Honorable Court. The 1<sup>st</sup> Respondent and the Contemnor thus had full knowledge of the orders of the Court;**
- iv) Around the month of July, the Applicant noticed a blockage of their drainage within the suit property. the blockage had been caused by the dumped loose soil and construction debris deposited by the 1<sup>st</sup> Respondent and its servants;**
- v) On 13<sup>th</sup> September 2024, the Applicant carried out its routine inspection of its pipelines where it was noted that one of the culverts was oozing a lot of water, despite there being no rain;**
- vi) On 17<sup>th</sup> September 2024, the Applicant's engineers inspected the site to establish the source of the**

**water. The Applicant concluded that the same was caused by the detouring of the natural flow of water occasioned by the 1<sup>st</sup> Respondents' actions of marking the boundaries and extent of the suit property;**

**vii) On 25<sup>th</sup> September 2024, the Applicant opened the culvert waters and removed the stagnant water. The Applicant established and confirmed that the surrounding sand that had been placed for safety reasons had been washed away;**

**viii) On 27<sup>th</sup> September 2024, the Applicant returned to the suit property for purposes of carrying out site works but were evicted by the 1<sup>st</sup> Respondent's hired hoodlums and officials. On 28<sup>th</sup> September 2024, the Applicant attempted further re-entry but were halted by the contemnor accompanied with a group of policemen who directed the Applicant to suspend the works until further notice;**

**ix) On 30<sup>th</sup> September 2024 the Applicant was again denied entry by a group of goons armed with rungun, led by the contemnor;**

**x) The 1<sup>st</sup> Respondent together with the contemnor are in contempt of the Court Orders of 6<sup>th</sup>**

**September 2023. They have deliberately and willfully disobeyed the orders which were clear, precise, unambiguous and binding upon themselves;**

**xi) The dignity and authority of this court must be protected, and those who flagrantly disobeyed the Court Orders must be punished; and**

**xii) This Honorable Court ought to protect its dignity and integrity by finding the 1<sup>st</sup> Respondent and Contemnor in contempt and committing its director to civil jail, or by imposing a fine and also committing him to civil jail.**

3. Kahia Transporters Limited (the 1<sup>st</sup> Respondent) is opposed to the application. By their Grounds of Opposition dated 8<sup>th</sup> July 2025, the 1<sup>st</sup> Defendant opposes the application on the grounds:

**1. That the Applicant seeks to enforce an order that was not issued by this Honorable Court;**

**2. That the instant Application does not satisfy the threshold to make the case for civil contempt. The Application failed to prove to the required standard that (a) the terms of the order were clear and**

**unambiguous on eviction of the 1<sup>st</sup> Defendant/ Respondent; (b) the 1<sup>st</sup> Defendant/ Respondent has acted in flagrant breach (deliberate and intentional disobedience of the terms of the order (if any);**

**3. That the Application is premised on repealed legislation and is without any foundation;**

**4. That the Application filed herein is an abuse of court process solely aimed at circumventing the expeditious hearing and determination of the main suit and is totally without merit;**

**5. That this Honorable Court is urged to dismiss the instant Application with costs to the Plaintiff/ Applicant as the Application amounts to classic case of abuse of the court process that ought not to be countenanced by the Court:**

**6. That in totality, the Application herein is a mere subterfuge by the Applicant and an extended avenue to propound its unmeritorious and legally untenable claims against the 1<sup>st</sup> Defendant/Respondent. Therefore, to entertain the same will be a travesty of justice and an affront to all known law; and**

**7. That the instant Application is frivolous, vexatious and lacks a legal basis and as such ought to be dismissed *in limine*.**

4. I have carefully perused and considered the Plaintiff's application as well as the response thereto by the 1<sup>st</sup> Respondent. I have similarly perused and considered the submissions and authorities placed before the Court by the Learned Advocates representing the parties.
5. By its application before the Court, the Plaintiff prays for an order that the 1<sup>st</sup> Respondent and its director Osman Ahmed Kahia be cited for contempt for disobedience of the Court Orders issued herein on 6<sup>th</sup> September 2023. In addition, the Plaintiff has urged the Court to demand and direct that the said Osman Ahmed Kahia personally appears in Court to show cause why he should not be committed to civil jail for a period of six (6) months or such other sentence as the court may find fair and just for being in flagrant disobedience of the said Court Orders.
6. It is the Plaintiff's case that the 1<sup>st</sup> Respondent had dumped loose soil and construction debris into the suit premises thereby causing a blockage of the drainage therein in order to

impede the Plaintiff's access and enjoyment to the premises. The Plaintiff further avers that the 1<sup>st</sup> Respondent and its said director has on several occasions blocked the Plaintiff's access into the said premises with the help of hired goons and the police. The Plaintiff asserts that the said acts were willful and deliberate and that the same undermined the dignity and authority of the Court.

7. As it were, contempt of Court has been defined as conduct or action that defies or disrespects the authority of the Court. In that regard, Section 5 of the Judicature Act confers jurisdiction on the Superior Courts to punish for contempt. Additionally, Section 29 of the Environment and Land Court Act confers jurisdiction upon this Court to punish a party found to be in disobedience or breach of its orders.

8. As the Court of Appeal stated in the case of ***Econet Wireless Kenya Limited -vs- Minister for Information and Communication of Kenya & Another (2005) eKLR:***

**“..... It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its**

**responsibility to deal firmly with proven contemnors.**

**In HADKINSON -Vs- HADKINSON (1952) 2 All ER. 567, it was held that:**

**“It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.”**

9. Considering a matter similar to the one before me in ***Samuel M.N. Mweru & Others -vs- National Land Commission & 2 Others (2020) eKLR***, Mativo J., (as he then was) held as follows:

**“It is an established principle of law that in order to succeed in civil contempt proceedings, the applicant has to prove (i) the terms of the order, (ii) knowledge of these terms by the Respondent, (iii) failure by the Respondent to comply with the terms of the order. Upon proof of these requirements the presence of willfulness**

**and bad faith on the part of the Respondent would normally be inferred, but the Respondent could rebut this inference by contrary proof on a balance of probabilities....”**

10. As to the standard of proof required in a matter such as this, the Court of Appeal in the case of ***Mutitika -vs- Baharini Farm Limited (1985) KLR 229, 234***, held as follows:

**“In our view the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt.... The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi - criminal in nature. The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she willfully acted in a manner that flouted the court order.”**

11. In the matter herein, it was not in dispute that the Plaintiff did file a Notice of Motion application herein dated 31<sup>st</sup> August 2023 under Certificate of Urgency seeking various interlocutory reliefs against the 1<sup>st</sup> Respondent. Having considered the application ex-parte on 6<sup>th</sup> September 2023, the Honorable Justice L. Naikuni granted interlocutory orders as follows:

**“(f) Pending the hearing and determination of this application the Honorable Court be pleased to issue an ex-parte temporary injunction restraining the 1<sup>st</sup> Defendant/Respondent by itself, servant, agents, employees, proxies or any other persons acting on its behalf from interfering, blocking, denying, impeding, preventing, obstructing, hampering, fettering or in any other manner whatsoever restraining or limiting the Applicant’s access to the land known as LR. 5169/VI/MN (Title No. CR 70862) which encompasses Kilindini Bay Mangrove Area for purposes of utilizing the land pursuant to the license dated 21<sup>st</sup> March 2012, 7<sup>th</sup> October 2019, 25<sup>th</sup> January 2021 and 8<sup>th</sup> June 2023; and**

**(g) Pending the hearing and determination of this application the Honorable Court be pleased to issue an ex-parte temporary injunction restraining the 1<sup>st</sup> Defendant/Respondent by itself, servant, agents, employees, proxies or any other person acting on its behalf from interfering with the Applicant's use and enjoyment of the land known as LR 5169/VI/MN (Title No. CR. 70862) which encompasses Kilindini Bay Mangrove Area."**

12. According to the Plaintiff, those orders were on 7<sup>th</sup> September 2023 served upon the 1<sup>st</sup> Respondent and that the same was duly acknowledged as evidenced by an Affidavit of Service sworn by one John K. Kalongo. The said Affidavit of Service annexed to the Supporting Affidavit of Joseph Mwela, reads in the relevant paragraphs 4 to 7 thereof as follows:

**"4. That on the same day, at about 10.30 a.m., I proceeded to the 1<sup>st</sup> Respondent's offices located at a yard past KTDA gate Miritini located at the far end of the road, where I was informed by the receptionist therein to call one Osman Kahia and inform him of the documents to be served;**

- 5. That I called the said Osman Kahia through his mobile number 072255990 that was provided by the Plaintiff's agent. The said Osman Kahia informed me that he had issued instruction to his lawyer Mr. Peter Omwenga of Mogaka Omwenga & Mabeya Advocates to accept service on behalf of the 1<sup>st</sup> Respondent and that I should go and serve him;**
- 6. That I left a copy of the Summons to Enter Appearance, Complaint, Verifying Affidavit, Witness Statements, List of Documents, Notice of Motion, Supporting Affidavit and Annexures and an order issued on 6<sup>th</sup> September 2023 with the receptionist, who accepted them but declined to stamp and sign on my copies; and**
- 7. That on the same day, at about 10.45p.m. I served the office of Mogaka Omwenga & Mabeya Advocates with the above mentioned documents which service was received by Mr. Otieno the authorized legal assistant who acknowledged receipt of the same by stamping on the front part of summons to enter appearance, Complaint, Certificate of Urgency and the Order. I attach a copy of the said documents together with my practicing certificate marked as JKK1.**

13. In respect of service of orders issued by the Courts, Order 48 Rule 2 of the Civil Procedure Rules provides as follows:

**“All orders, notices and documents required by these Rules to be given to or served on any person shall, save where other provision is made, be served in the manner provided for the service of summons.”**

14. Order 5 Rule 3 of the Civil Procedures Rules on the other hand provides as follows:

**“Subject to any other written law, where the suit is against a corporation the summons may be served—**

**(a) on the secretary, director or other principal officer of the corporation; or**

**(b) if the process server is unable to find any of the officers of the corporation mentioned in rule 3(a)—**

**(i) by leaving it at the registered office of the corporation;**

**(ii) by sending it by prepaid registered post or by a licensed courier service**

**provider approved by the court to the registered postal address of the corporation;**

**(iii) if there is no registered office and no registered office or physical address of the corporation, by leaving it at the place where the corporation carries on business; or**

**(iv) by sending it by registered post to the last known postal address of the corporation.”**

15. In the matter herein, there was no evidence of service of the Court Orders on the Secretary of the 1<sup>st</sup> Respondent or any of its directors. As the Court of Appeal stated in the case of ***Nyamodi Ochieng Nyamogo & Another -vs- Kenya Posts & Telecommunications Corporation (1994) KECA 114 (KLR)***

**“The law on the question of service of orders stresses the necessity of personal service. In *Halsbury’s Laws of England (4<sup>th</sup> Ed) Vol 9 on p 37 para 61* it is stated:**

**“61. Necessity of personal service. As a general rule, no order of court requiring a person to do or abstain from doing any act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question.**

**Where the order is made against a company, the order may only be enforced against an officer of the company if this particular officer has been served personally with a copy of the order.**

**Keeping the importance of personal service of the order in mind we now take a look at the aforesaid two copies of the order both of which bear the stamp of Wetangula & Co Advocates, in acknowledgement of receipt of the said orders. Service on Wetangula & Co does not constitute personal service on any of the three officers. It is a personal service on each one of them that is required to be effected by law. Service of the two orders on Wetangula & Co, Advocates, on 25<sup>th</sup> October, 1993, and 1<sup>st</sup> November, 1993, therefore, is a wasted effort.”**

16. In the circumstances herein, I was not persuaded that the 1<sup>st</sup> Respondent and/or the alleged contemnor had been given proper and lawful notice of the terms of the orders issued herein on 6<sup>th</sup> September, 2023.
17. However, even where one were to assume that the 1<sup>st</sup> Respondent was properly served with the said orders, I was unable to see how in the circumstances of this case, they could be said to be in contempt of the orders issued on 6<sup>th</sup> September 2023. According to the Plaintiff, on 13<sup>th</sup> September 2024, one year after the orders had been issued, its engineers carried out a routine inspection of its pipelines whereby it was noted that one of the culverts was oozing a lot of water out of the ordinary and despite there being no rain.
18. It was further the Plaintiff's case that on 17<sup>th</sup> September 2024 the engineers carried another site inspection where they noted and concluded that the situation had been brought about by the detouring of the natural flow of water occasioned by the 1<sup>st</sup> Respondent's actions of marking of the boundaries and extent of the suit property. The Plaintiff has neither annexed the engineers' report nor explained how they came to that conclusion. From the material placed before the Court,

by the Plaintiff itself, it was apparent that the 1<sup>st</sup> Respondent was issued with a Title for the suit property on 14<sup>th</sup> December 2017. The Plaintiff appreciated that it was on the basis of the title that the 1<sup>st</sup> Respondent was claiming the land and hence this suit. There was no evidence placed before the court to demonstrate that the 1<sup>st</sup> Respondent had marked its boundaries on the land as purported after the Court Orders were issued. The orders had not required the eviction of the 1<sup>st</sup> Respondent from the land.

19. Similarly, I do not find any evidence in support of the allegation that the 1<sup>st</sup> Respondent and/or its officials had evicted the Plaintiff's engineers and workers from the suit property. While the Plaintiff has exhibited photos of the site works it was carrying out in the area, no such evidence was exhibited in support of the allegation that the alleged contemnor and/or his so-called hired goons had stopped the Plaintiff's officials from entering the premises. The Medical Report of one Joseph Gitonga said to be the Plaintiff's worker dated 27<sup>th</sup> September 2024 and the accompanying Police Occurrence Book of the same day do not make any mention of the 1<sup>st</sup> Respondent and/or its officers and the same were

not in my view conclusive evidence that the 1<sup>st</sup> Respondent had willfully disobeyed the orders issued by the Court on 6<sup>th</sup> September 2023.

20. In the premises, I was not persuaded that the application before the court meets the threshold and standard of proof for contempt of Court. There was no cogent or credible evidence in support of the position that the 1<sup>st</sup> Respondent had been properly served with the orders and that the 1<sup>st</sup> Respondent and/or any of its directors or servants had willfully and deliberately disobeyed the same.

21. Accordingly, the Motion dated 4<sup>th</sup> October 2024 must fail. I dismiss the same with costs to the 1<sup>st</sup> Respondent.

**Ruling dated, signed and delivered in open court and virtually at Mombasa this 5<sup>th</sup> day of March, 2026.**

.....  
**J.O. OLOLA**  
**JUDGE**

**In the presence of:**

- a) Ms. Firdaus Court Assistant.
- b) Ms. Lukoye holding brief for Dr. Nyaundi Advocate for the Applicants
- c) Mr. Billow Advocate for the 1<sup>st</sup> Respondent
- d) Ms. Lutta Advocate for the 2<sup>nd</sup> to 7<sup>th</sup> Respondents
- e) Mr. Mungai for the 3<sup>rd</sup> Interested Party

Original